## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

| JEWEL M. WHITE, JR. Claimant   | )                    |
|--------------------------------|----------------------|
| VS.                            | Docket No. 195,927   |
| DUPACO PAINT, INC. Respondent  | ) DOCKET NO. 193,927 |
| AND                            |                      |
| ITT HARTFORD Insurance Carrier | }                    |

## **ORDER**

The respondent and its insurance carrier request a review of the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on October 10, 1995.

## **I**SSUES

The Administrative Law Judge awarded claimant temporary total disability benefits commencing the date they were terminated by the respondent and continuing through August 7, 1995. The respondent and its insurance carrier requested this review and in their request for review stated the issue as follows: "1. Whether temporary total disability benefits are owed to claimant from April 24, 1995, until August 7, 1995."

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The jurisdiction of the Appeals Board to review preliminary hearing findings are statutorily created by K.S.A. 44-534a. The statute provides the Appeals Board may review those preliminary findings pertaining to the following: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and (4) whether certain defenses apply. The Appeals Board also has jurisdiction to review preliminary hearing findings if it is alleged an administrative law judge exceeded their jurisdiction. See K.S.A. 44-551, as amended by S.B. 59 (1995).

K.S.A. 44-534a(a)(2) grants the administrative law judge the authority to make findings in granting or denying temporary total disability compensation and ongoing medical

IT IS SO OPPEDED

treatment. Therefore, the Administrative Law Judge's Order that claimant be paid temporary total disability benefits is an order permitted by K.S.A. 44-534a and within the Judge's jurisdiction and authority.

In this instance, whether claimant is entitled to temporary total disability benefits is a question of the nature, character, and extent of claimant's injury and temporary disability. Because the issue is not one enumerated in K.S.A. 44-534a, nor did the Administrative Law Judge exceed his authority in awarding the benefits, the issue is not reviewable at this juncture of the proceeding.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark entered in this proceeding on October 10, 1995, remains in full force and effect and this review is dismissed.

| II IS SO ORDERED.                |  |
|----------------------------------|--|
| Dated this day of December 1995. |  |
| BOARD MEMBER                     |  |
| BOARD MEMBER                     |  |
| BOARD MEMBER                     |  |

c: David H. Farris, Wichita, Kansas Robert G. Martin, Wichita, Kansas John D. Clark, Administrative Law Judge Philip S. Harness, Director